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Melquisedec Francisquini

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EXAMINER

GALLEG0, ANDRES F

ART UNIT

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4193

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/551,111	Applicant(s) FRANCISQUINI, MELQUISEDEC	
	Examiner ANDRES GALLEG0	Art Unit 4193	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Specification

The abstract of the disclosure is objected to because of minor informalities.

Line 4, "which in reality are cabinets" should be changed to --which in reality, are cabinets--.

Line 7 contains an element number after "cross section". Element numbers should not be placed in the abstract.

Line 7, "which on its exterior" should be changed to --which, on its exterior--.

Line 9, "whilst that on the inside" should be changed to --whilst on the inside--.

Appropriate correction is required. See MPEP § 608.01(b).

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

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- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

The incorporation of essential material in the specification by reference to an unpublished U.S. application, foreign application or patent, or to a publication is improper. Applicant is required to amend the disclosure to include the material incorporated by reference, if the material is relied upon to overcome any objection, rejection, or other requirement imposed by the Office. The amendment must be accompanied by a statement executed by the applicant, or a practitioner representing the applicant, stating that the material being inserted is the material previously incorporated by reference and that the amendment contains no new matter. 37 CFR 1.57(f).

The attempt to incorporate subject matter into this application by references to PI 8406283 and BR PI 202231 are ineffective because the applications were not included

in an Information Disclosure Statement, nor were copies the references included with the submission of the application.

Appropriate correction is required.

The disclosure is objected to because of the following informalities:

Page 1 line 4, "More particularly the current invention refers to a" should be written as --The current invention refers to a--.

Page 1 line 7, "... varied of cabinet types, these are also known as..." should be written as --... varied of cabinet types. These are also known as...--.

Page 2 line 3, "housing the internal components" should be changed to --housing for the internal components--.

Page 2 line 7, "... difficult as well as presenting a few technical restrictions" should be written as --... difficult and presents a few technical restrictions--.

Page 2 line 24-25, "Therefore in most of the abovementioned cross sections and others are generally of the tubular type, and are therefore consequently..." should be written as --Therefore, in most of the abovementioned cross sections and others, generally of the tubular type, are consequently...--.

Specification is replete with errors and requires revision from the applicant.

Appropriate correction is required.

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is

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requested in correcting any errors of which applicant may become aware in the specification.

Claim Objections

Claims 1-19 are objected to because of the following informalities:

Claim 1 line 7, “metallic cross section’s, which constitutes” should be written as --metallic cross sections, which constitute--.

Claim 1 line 13, “characterized” should have the same font as the rest of the text. Words should not be in bolded text.

Claim 1 line 15, “compete to form” should be written as --complete to form--.

Claim 1 line 17, “the said cabinet” should use either --the cabinet—or --said cabinet--. Either “the” or “said” should be used exclusively and consistently throughout the claims.

Claim 1 line 19, “which forma aright angle” should be written as --which form a right angle--.

Claim 1 line 22, “an apex in a the shape of a “U”” should be written as --a “U” shaped apex--.

Claim 1 line 24, “these walls” should be written as --the walls--.

Claims 2-19, “justification” should be replaced by --claim—when it is used to describe a previous claim.

Claims are replete with grammatical, typographical, and other related errors which should be addressed by the applicant.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 4-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Because claim 1 is drawn to a specific embodiment (Figure 4), it is unclear how dependent claims 4-19 (which are drawn to specific embodiments illustrated in figures 15-29) can function without compromising the limitations in claim 1. Appropriate correction is required.

Claims 4-19 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. How the first embodiment (Figure 4) described by claim 1 would take on the form of the distinct alternate embodiments (Figures 15-29) of claims 4-19 without compromising the limitations in claim 1 is critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). Appropriate correction is required.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

Claim 1 provides for the use of a structure of metallic cross section, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 1 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Regarding claim 1, the word "means" is preceded by the word(s) "a structure (103) of metallic cross section's (104), which constitutes" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Claim 1 recites the limitation "the walls" in line 8. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the external walls" in line 8. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the respective doors and hinges" in line 9. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the necessary uprights" in line 11. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the opposite uprights" in line 17. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the stretches of walls" in line 23. There is insufficient antecedent basis for this limitation in the claim.

Claims 1-19 are replete with 35 U.S.C. 112 issues that will require correction by the applicant.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7-8, and 13-14, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Pochet (U.S. Patent Number 6231142) in view of Betsch et al. (U.S. Patent Number 5202818).

Regarding claim 1, Pochet discloses a cabinet (1) defined by side enclosures (27, 44) with a structure (2) of metallic cross sections, a hinged door (3), other accessories (6, 53), uprights (7, 8) characterized by a transversal cross section with a defined geometry in a triangular rectangular format forming an internal section or central core in a tubular form (30), an upright (see Figure 20) facing the inside of the cabinet, opposite upright (65) facing the outside of the cabinet, whilst other two uprights (24) present a peculiar configuration forming right angles in the direction of upright (65) and immediately after forming an apex in the form of a "U" (22, 25), and stretches of walls (11, 12) receive a succession of folds at different angles so that the walls may close off the cross section at the upright (65), and at the same time, the upright extends outwardly and configured an assembly wing (66) flanked by the walls (examiner interprets the walls to be stretches of walls (11, 12)), remaining outside the cabinet, and walls (15, 16) remaining inside the cabinet, with rows of openings and holes of variable shapes and sizes (17, 18) distributed along the walls, and other rows of variable openings and holes (13, 14) (Figures 1 and 20, Column 5 Lines 35-49, 54-56).

Also regarding claim 1, Pochet does not disclose an external wall of folded sheet metal. Betsch teaches an external wall of folded sheet metal (54, 56, 58, 60) as shown in Figure 2 and Column 3 Lines 31-51. It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the external walls of Pochet with the external walls of folded sheet metal as taught by Betsch, since such a modification would give a cabinet more protection due to a sturdy exterior.

Regarding claim 2, Pochet discloses uprights (24) and upright (65) are at an inclined alignment corresponding to a diagonal hypotenuse to a straight upright (Figure 20).

Regarding claim 3, Pochet discloses a mounting wing (examiner interprets mounting wing to be assembly wing (66)) positioned in a parallel manner in relation to one of the apexes (25), as well as being limited within the external limits of the cross section as defined by uprights (24) (Figure 20).

Regarding claim 4, Pochet discloses a mounting wing (examiner interprets mounting wing to be assembly wing (66)) extending itself in conjunction with a fold at right angles, with it's positioning being parallel to one of the apexes (25), which short and wide, and the wing (66) being capable of closing off the profile. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the wing (66) with three layers of superimposed sheet steel, since such a modification would provide a sturdier wing (Figure 20).

Regarding claim 5, Pochet discloses a diagonal wall which interlinks the two apexes (22, 25) which are practically straight and in its mid parts, two steel sheets (examiner interprets steel sheets as flanked walls (11, 12)) are joined and face outwards, a double mounting wing is developed (examiner interprets double mounting wing as assembly wing (66), seeing that it is folded at right angles in the middle, forming stretches with openings (13, 14) (Figure 20).

Regarding claim 7, Pochet discloses another constructive variation where one the apexes (Figure 20: 25) is substituted by a wing (Figure 16: 11) coplanar to a wall

(Figure 16: 16) as well as another mounting wing (Figure 16: 12) positioned in parallel relation to the apex (Figure 16: 22), the enclosing of the cross section capable of being carried out on the wing (Figure 16:11) (Pochet: Figure 16).

Regarding claim 8, Pochet discloses, in another constructive variation, a wing (Figure 16: 11) folded perpendicularly inwards and in a condition which is parallel to the other wing (Figure 16: 12) (Pochet: Figure 16).

Regarding claim 13, Pochet discloses, in another constructive variation, a triangular geometry defined by an upright, and a diagonal wall medially fitted with a wing (Figure 16: 12) where the cross section is closed, being also that walls (Figure 16: 15, 16) with openings (Figure 16: 17, 18) are interlinked to the diagonal wall, capable of forming extreme wings with a double wall (Figure 16: 11).

Regarding claim 14, in another constructive variation, Pochet discloses a metallic cross section comprising a quadrangular transversal section preserving an upright and openings (Figure 12: 17, 18), where one of the walls (Figure 12: 15) present an inwardly facing fold forming a double walled wing (Figure 12: 47) and still the other wall (Figure 12: 20) extends outwardly forming another wing (Figure 12: 21'), where the closing off of the cross section occurs.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pochet in view of Betsch, further in view of Rasmussen (U.S. Patent Number 6428127). Rasmussen teaches two apexes (14) interlinked by a "W" wall in a stepped manner, forming an outwardly facing median straight angle, with a closing off of the cross section (1) capable of being closed off on one of the apexes (14) as shown in Figure 2, and

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Column 3 Lines 51-62. It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the profile of Pochet with the profile including a "W" wall as taught by Rasmussen, since such a modification would provide the profile forming a frame structure for a cabinet an alternate design to the frame.

Claims 9, 10, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pochet in view of Betsch, further in view of Debus et al. (U.S. Patent Number 4643319).

Regarding claim 9, Debus teaches a wing completing a square tubular section, where the two uprights have extensions forming wings (16,24) capable of having holes (as disclosed in Pochet: Figure 5, Elements (13, 14)), the wings remaining apart from the walls in parallel (13) in such a manner that a space is formed between the wall (13) and the wing (24), and also on one of the wings (16), a closing off of the cross section occurs as shown in Debus: Figure 1. It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the profile of Pochet with the square tubular sectioned profile as taught by Debus, since such a modification would provide the profile forming a frame structure for a cabinet an alternate design to the frame.

Regarding claim 10, Debus teaches wings (16, 24) having a length smaller than or equal to the length of the corresponding wall (13) as shown in Figure 1.

Regarding claim 12, Betsch teaches a metallic cross section comprising a diagonal wall (48) whose ends form wings (40, 42) as shown in Figure 5. It would have been obvious to one having ordinary skill in the art at the time the invention was made

to substitute the metallic cross section of Debus with the metallic cross section taught by Betsch, since such a modification would provide the profile forming a frame structure for a cabinet an alternate design to the frame.

Claim 11, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Betsch et al. in view of Pochet, further in view of J.E. Kinnear (U.S. Patent Number 3117656). Betsch in view of Pochet teaches an upright (68) with openings (52) on two of its walls (36, 38), with a diagonal wall (48) between upright (68) and another upright not disclosed. Kinnear teaches an upright as shown in Figure 2. It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the profile of Betsch with the profile as taught by Kinnear, since such a modification would allow a diagonal wall to exist between two opposing uprights, having one end capable of forming a triangular volute encasing the extremity of the wall (48), defining a sealed wall against the side of the cross section remaining in the internal part of the cabinet and the side of the cross section that remains on the outside of the cabinet, thus providing the entire profile forming a frame structure for a cabinet an alternate design to the frame.

Claim 15, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Pochet in view of Betsch, further in view of L.J. Fay (U.S. Patent Number 3297383). Fay teaches a metallic cross section, in another constructive variation, comprising two independently folded cross sections welded together from welded sheet steel (21), with a diagonal wall (20) as an independent piece of sheet steel whose ends are welded against walls (19) which present wings (38, 39) with single

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walls as shown in Figure 3, Column 2 Lines 33-41, 67-71. It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the metallic cross section of Pochet with the metallic profile as taught by Fay, since such a modification would provide the profile forming a frame structure for a cabinet an alternate design to the frame.

Claim 16, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Fay in view of Pochet and Betsch, further in view of Rasmussen. Fay in view of Pochet and Betsch teach single walled wings (Fay: Figure 3: 38, 39) and a capacity to weld (Fay: 21). Rasmussen teaches an internal part of an upright as an independent part (Rasmussen: 1) maintaining a spacing with "U" folded ends (Rasmussen: 14) as shown in Rasmussen: Figure 2. It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the welded diagonal wall of Fay with the internal part as taught by Rasmussen, since such a modification would provide the profile forming a frame structure for a cabinet an alternate design to the frame.

Claim 17, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Fay in view of Pochet and Betsch, further in view of Kinnear. Kinnear teaches an opposing upright with walls punched with openings (A3) with superimposed stretches (A1, A2) as shown in Figure 2. It would have been obvious to one of ordinary skill in the art at the time the invention was made to weld the profile of Fay to the profile as taught by Kinnear, since such a modification would provide the profile forming a frame structure for a cabinet an alternate design to the frame.

Claim 18, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Pochet in view of Betsch, further in view of Nikolai (U.S. Patent Number 5791115). Nikolai teaches a metallic cross section, in another constructive variation, opposing uprights formed by "U" shaped apexes (16, 18), to which ends of parts are fastened forming a diagonal wall (20) in one of the uprights as shown in Figure 4. It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the metallic cross section of Pochet with the metallic cross section of Nikolai, since such a modification would provide the profile forming a frame structure for a cabinet an alternate design to the frame.

Claim 19, as best understood, rejected under 35 U.S.C. 103(a) as being unpatentable over Pochet in view of Betsch, further in view of Altena (U.S. Patent Number 6808240). Altena teaches a diagonal wall (10) including a mounting wing (11) as shown in Figure 2. It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the metallic cross section of Pochet with the metallic cross section of Altena, since such a modification would provide the profile forming a frame structure for a cabinet an alternate design to the frame.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Marzec et al (U.S. Patent Number 6238029), Benner et al (U.S. Patent Number 5992646), Diebel et al. (U.S. Patent Number 5971511), and Benner et al. (U.S. Patent Number 6149255).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDRES GALLEG0 whose telephone number is (571)270-7630. The examiner can normally be reached on Monday - Friday, 7:30 AM - 5:00 PM EST (Every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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2/19/09